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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,772	09/15/2003	Ronald P. Doyle	RSW920030174US1	2183
23550 7590 04/18/2007 HOFFMAN WARNICK & D'ALESSANDRO, LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207			EXAMINER WAI, ERIC CHARLES	
			ART UNIT 2195	PAPER NUMBER

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/662,772	DOYLE ET AL.	
	Examiner	Art Unit	
	Eric C. Wai	2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-20 are presented for examination.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 11-16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. Claim 11 recites a "system"; however, it appears that the system would reasonably be interpreted by one of ordinary skill in the art as software, per se, failing to be tangibly embodied or include any recited hardware as part of the system.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 6, and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a. The following terms lack antecedent basis:

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- i. Claim 6, "the image system".
- b. The following terms are not clearly understood:
 - ii. Claims 18-20 recite, "determining an attribute...". It is unclear how determining an attribute relates to the rest of the invention (i.e. how does this determination affect the provisioning?).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhee et al. (US Pat No. 6,457,008 hereinafter Rhee).

9. Regarding claim 1, Rhee discloses a method of managing resources in a system, the method comprising:

determining a demand for a resource (col 1 line 17);

determining an attribute of the system (col 1 lines 19-20, wherein the allocation and scheduling is performed on factors other than simply just demand); and

provisioning a resource for the service based on the demand and the attribute (col 1 lines 18-19).

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10. Rhee does not explicitly teach determining a demand for a service. However, Rhee does teach that the busier the system, (i.e. more users), leads to greater demand on each resource (col 1 lines 14-16). It would have been obvious to one of ordinary skill in the art at the time of the invention to include that the demand for a resource is a result of the demand for the service.

11. Regarding claim 2, Rhee teaches that the attribute comprises a demand for at least one other service sharing the resources (col 1 lines 18-19, wherein the resource is shared by another entity).

12. Regarding claim 3, Rhee teaches that the resources comprise at least one software server (col 1 lines 46-51), and wherein the attribute comprises a software status of the at least one software server (col 3 lines 23-35, wherein resource requesters are classified according to their mode of execution (i.e. status), and are run according to the operation of the DBMS).

13. Regarding claim 4, Rhee teaches that the resources comprise at least one software server (col 1 lines 46-51), but does not explicitly teach that the attribute comprises a cache state of the at least one software server.

14. However, Rhee does teach grouping the resource requesters in to classes based on their requirements for a resource and processing those classes one at a time to reduce the need for context switching (col 3 lines 23-40 and col 12 lines 33-48). It would

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have been obvious to one of ordinary skill in the art at the time of the invention to include provisioning resources based on a cache state. One would be motivated by the desire for more efficient use of resources by reducing the necessity to replenish the cache with new data.

15. Regarding claim 5, Rhee teaches that the attribute comprises a time period required to provision at least one of the resources for the service (col 3 lines 58-61).

16. Regarding claim 6, Rhee teaches that the attribute comprises a load on the image system (col 3 lines 9-13).

17. Regarding claims 7-10, Rhee teaches the method as claimed in claims 1-6.

18. Regarding claim 11-16, they are the system claims of claims 1-6 above. Therefore, they are rejected for the same reasons as claims 1-6 above.

19. Regarding claim 17-20, they are the program product claims of claims 1-6 above. Therefore, they are rejected for the same reasons as claims 1-6 above.

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Conclusion

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric C. Wai whose telephone number is 571-270-1012. The examiner can normally be reached on Mon-Thurs, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng - Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EW

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